

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELIZABETH STARKEY,

Plaintiff,

-against-

G ADVENTURES INC.,

Defendant,

and

GAP ADVENTURES INC.

Third Party Plaintiff,

-against-

GALAKIWI, DANIEL DOE (LAST NAME
BEING UNKNOWN), JOHN DOES 1-10
(said names being fictitious
and unknown) AND ABC CORP. 11-
20 (said names being fictitious
and unknown)

Third Party Defendants

Civil Action

Civ. Act. No. 12-cv-7837 (TPG)

DECLARATION OF SAUL MANDEL

I, Saul Mandel, declare as follows:

1. I am the VP Risk Management & Head of Marine Operations of G Adventures Inc. I am fully familiar with the facts and circumstances surrounding this matter and respectfully submit this Declaration in support of G Adventures Inc.'s motion to dismiss plaintiff's complaint.

2. Insofar as the contents of this Declaration are within my own knowledge, they are true. Insofar as the contents of

this Declaration are not within my own knowledge, they are true to the best of my information and belief and are based upon the documents contained within the file and other business records kept by G Adventures Inc.

3. G Adventures Inc. is an adventure travel company offering tours of regions in Africa, Arctic, Antarctica, Asia, Australia, New Zealand, Central America, Europe, North Africa, Middle East, North America and South America.

4. Our attorneys have advised that plaintiff produced her Confirmation Invoice (**Exhibit A**) and Service Voucher (**Exhibit B**) as part of her pre-trial exchange of documents. The Confirmation Invoice and Service Voucher include an address on the top of the documents of 364 Ave of the Americas, New York, NY 10011-8402. G Adventures Inc., a Canadian corporation, entered into a lease for the storefront at 364 Avenue of the Americas, New York, New York 10012. This was a 'concept store' where one of its purposes was to allow visitors to learn more about adventure travel through seminars and lectures relating to eco and adventure destinations.

5. The plaintiff did not book her trip at the store located at 364 Avenue of the Americas, New York, New York 10012. The lease on that store expired in December, 2012 and was not renewed.

6. The plaintiff booked her trip online through G Adventures Inc., a Barbados corporation.

7. G Adventures Inc.'s United States corporation has its principal executive office at 260 West Exchange St., Providence, Rhode Island 02903. That corporation is duly organized and existing pursuant to the laws of the State of Delaware. It is also a foreign business corporation registered with the New York State Department of State. However, G Adventures Inc.'s United States corporation does not accept bookings for trips.

8. Neither the Canadian or Barbados corporations have ever been incorporated under the Laws of the State of New York and have never maintained its principal place of business in the State of New York. The principal place of business of the Canadian corporation is at 19 Charlotte Street, Toronto, Ontario, Canada M5V 2H5. The principal place of business of the Barbados corporation is Clarion House, #51 Bluewaters Road, Rockley, Christ Church, Barbados.

PLAINTIFF, ELIZABETH STARKEY'S TICKET PURCHASE

9. On or about September 6, 2011, plaintiff, Elizabeth Starkey, purchased her ticket online for the Galapagos on a Shoestring Tour, which is a 9 day tour of the Galapagos Islands located in Ecuador. Page 2 of the Conformation Invoice states the following:

Confirmation of your reservation means that you have already read, agreed to and understood the terms and conditions, however, you can access them through the below link if you need to refer to them for any reason:

[Http://www.gapadventures.com/media-server/static/documents/pdf/terms-conditions.pdf](http://www.gapadventures.com/media-server/static/documents/pdf/terms-conditions.pdf) (**Exhibit A**)

10. Page 3 of the Confirmation Invoice also states:

For a full list of our terms and conditions, please refer to our website www.gapadventures.com (**Exhibit A**)

11. Elizabeth Starkey's Service Voucher for her Galapagos on a Shoestring Tour contains the following language on Page 2:

Confirmation of your reservation means that you have already read, agreed to and understood the terms and conditions, however, you can access them through the below link if you need to refer to them for any reason:

[Http://www.gapadventures.com/media-server/static/documents/pdf/terms-conditions.pdf](http://www.gapadventures.com/media-server/static/documents/pdf/terms-conditions.pdf) (**Exhibit B**)

12. On September 6, 2011, Elizabeth Starkey received the e-mail attached hereto as **Exhibit C**. The confirming e-mail provided details of her trip and included the following:

TERMS AND CONDITIONS:

All tours are operated by Gap Adventures. All Gap Adventures passengers must read, understand and agree to the following terms and conditions:

http://www.gapadventures.com/media-server/static/documents/pdf/terms-conditions.pdf?utm_source=Pax3&utm_medium=Pcom&utm_campaign=Pax

13. Attached as **Exhibit D** is G Adventures Inc. Booking Terms and Conditions. Paragraph 32, titled Applicable Law,

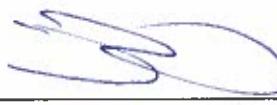
states that the Terms and Conditions and Conditions of Carriage including all matters arising from it are subject to Ontario and Canadian Law and the exclusive jurisdiction of the Ontario and Canadian courts.

14. I have no personal knowledge of Elizabeth Starkey or the incident that is alleged to have happened during her trip.

15. No G Adventures Inc.'s employee with knowledge is located in the United States.

I declare under penalty of perjury of laws of the United States of America that the foregoing is true and correct.

Executed on June 26, 2013 at Toronto, Ontario, Canada



SAUL MANDEL